Garrett Freight Lines, Inc. *and* **Joseph F. Pobar.**
Case 27-CA-6979

April 23, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

Upon a charge filed on October 22, 1980, by Joseph F. Pobar, herein called the Charging Party, and duly served on Garrett Freight Lines, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 27, issued a complaint on January 27, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

On December 10, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 18, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter failed to file a response to the Notice To Show Cause and the allegations in the Motion for Summary Judgment accordingly stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, Respondent was duly served with the complaint and notice of hearing on January 27, 1981, but failed to file an answer. Thereafter, by letters of October 30 and November 25, 1981, which were duly served on Respondent, the General Counsel informed Respondent that he intended to move for summary judgment if no answer were filed.[1] Respondent has thereafter failed to file an answer and, as noted above, Respondent has also failed to file a response to the Notice To Show Cause. Accordingly, under the rule set forth above, no good cause having been shown for the failure to file an answer to the complaint, the allegations of the complaint are deemed admitted and found to be true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation with its principal office and place of business in Pocatello, Idaho. Respondent is now, and at all times material herein has been, engaged at its terminal warehouse in Denver, Colorado, in the interstate transfer and delivery of freight. Respondent, in the course and conduct of its business operations, annually transports freight from its

[1] In his letter of October 30, addressed to Respondent's director of industrial relations at Respondent's Pocatello, Idaho, location, the General Counsel indicated that the complaint, though duly served on Respondent, had been served at Respondent's local address in Denver, Colorado. The General Counsel observed that Respondent's failure to file an answer may have stemmed from the fact that the complaint was served locally. Accordingly, in his October 30 letter, the General Counsel included a copy of the complaint and requested that an answer be filed.

In his letter of November 25, the General Counsel indicated that on November 17, in a discussion with Respondent's director of labor relations, the said director indicated that he had, in fact, sent an answer on November 9 or 10. However, the General Counsel indicated in the November 25 letter that the answer had not been received by the Region and that he had asked the director of labor relations in that November 17 conversation to resubmit the answer. No answer had been filed as of the November 25 letter, and in that letter the General Counsel gave Respondent until close of business December 3 to file an answer or he would move for summary judgment.

Denver terminal to points and places outside the State of Colorado and annually derives revenues in excess of $50,000 for these activities.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local 17, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The following persons are agents of Respondent and are supervisors within the meaning of Section 2(11) of the Act: Joe Wiewel, terminal manager; Ralph Green, supervisor; Chuck Fatsinger, supervisor.

On or about September 11, 1980, Respondent, acting by and through its terminal manager, Joe Wiewel, told the Charging Party that, because of a claim he had made for overtime hours under the collective-bargaining agreement in effect between Respondent and the Union, the Charging Party would work no more overtime. On or about September 11, 1980, and during the months of September and October 1980, Respondent, acting by and through its statutory supervisors and agents, Ralph Green and Chuck Fatsinger, stated that the Charging Party could not work overtime and that he had "screwed up" overtime for the graveyard shift. We find that by these statements Respondent interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their Section 7 rights and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

Since on or about September 11, 1980, Respondent has reduced the overtime opportunities of the Charging Party and other graveyard shift employees at its Denver, Colorado, terminal. Respondent has reduced such overtime opportunities because of the Charging Party's assertion of a contract claim under the collective-bargaining agreement in effect between Respondent and the Union. By this action, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them under Section 7 of the Act and, by such conduct, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act. Also, by this action, Respondent did discriminate, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees for the purpose of discouraging membership in the Union, and Respondent did thereby engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act. Having found that Respondent has discriminatorily reduced overtime opportunities, we shall order that Respondent make the Charging Party and other graveyard shift employees whole for any loss of overtime they may have suffered because of the discriminatory acts of Respondent taken against them. Such overtime shall be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest to be computed as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. The Respondent, Garrett Freight Lines, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 17, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By telling Joseph F. Pobar that because he had filed a claim under the contract he would work no more overtime and by telling him that he had "screwed up" overtime for the graveyard shift, Respondent violated Section 8(a)(1) of the Act.

4. By reducing overtime opportunities for the Charging Party and other graveyard shift employees because the Charging Party engaged in protected concerted union activities, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Garrett Freight Lines, Inc., Denver, Colorado, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Telling employees that they would no longer work overtime because they have filed claims under their collective-bargaining agreement.

(b) Reducing overtime opportunities for employees because they choose to file claims under their collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make Joseph F. Pobar and other graveyard shift employees whole for any overtime opportunities lost because of the discriminatory acts of Respondent taken against them as provided in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Denver, Colorado, facility copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United states Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT tell employees that they will no longer work overtime because they have filed claims under their collective-bargaining agreement.

WE WILL NOT reduce overtime opportunities of our employees because they choose to file claims under their collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them in Section 7 of the Act.

WE WILL make Joseph F. Pobar and other graveyard shift employees at our Denver, Colorado, terminal whole for any loss of overtime they may have suffered by reason of the discrimination against them, plus interest.

GARRETT FREIGHT LINES, INC.